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ABSTRACT

This booklet for Minnesota young people with disabilities and their families is intended to explain vocational rehabilitation services required under the Rehabilitation Act as amended in 1992 and transition services under the Individuals with Disabilities Education Act. The first section discusses vocational rehabilitation, transition services for students with disabilities ages 14 to 21, required transition provisions in the Individualized Education Program (IEP), and the transition IEP meeting. The next section considers eligibility for vocational rehabilitation, applying for services, assessment, and planning. The following section describes the Individualized Plan for Employment (IPE), which identifies job goals and needed services, and discusses rehabilitation technology and supported employment. The fourth section is on financial factors, including determination of "comparable benefits" and consumer financial participation. Next, the rehabilitation appeals procedure is detailed. Finally, the main features of the Americans with Disabilities Act are identified and suggestions for making vocational rehabilitation work for the individual are offered. Appendices provide a history of legislation affecting people with disabilities, supported employment definitions, and vocational rehabilitation appeals procedures. (CR)

The Road to Work

An Introduction to Vocational Rehabilitation



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A Booklet for
Youth and Adults with Disabilities,
Family Members and Advocates
Second Edition

PACER Center, Inc.

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The Road to Work

An Introduction to Vocational Rehabilitation

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Introduction

Are you:

- ☐ **a young person with a disability** wondering about your career after high school?
- ☐ **a person with a disability** who needs help preparing for, finding, or holding a job?
- ☐ **the parent, family member, or advocate of a person with a disability** who wants to learn about laws regarding Vocational Rehabilitation services and nondiscrimination in employment?

If you answered yes to any of these questions, then you need this book.

This book is about the legislation and services that support your right to work. You'll learn about the federal laws that protect your rights as you make the transition from high school to adult life.

You'll learn about the Rehabilitation Act and its amendments, which support vocational rehabilitation services for adults and youth with disabilities. If you are graduating from high school and need more information to prepare for the job market, or if you are out of school and finding it difficult to locate or maintain a job, the Rehabilitation Act can help.

The philosophy behind the Rehabilitation Act is that a person with a disability, no matter how significant, is able to work. It states that "disability is a natural part of human experience" and that people with disabilities have a right to:

- live independently
 - enjoy self-determination
 - make choices about their lives
 - contribute to society
 - pursue meaningful careers
 - enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society
- [Section 2(a)(3)]*

The law also requires all programs that receive assistance under the Act to:

- respect the informed choices made by people with disabilities
- respect the privacy of the people they serve
- offer equal access to services, including providing information in accessible formats
- allow inclusion, integration, and full participation in the community
- support the involvement of a parent, a family member, a guardian, an advocate, or other representative when someone with a disability requests, desires, or needs such support
- advocate for people with disabilities and support community involvement

[adapted from Section 2(c)]

The Rehabilitation Act provides the financial and legal support for the vocational rehabilitation systems throughout the United States. It outlines what services state vocational rehabilitation agencies must provide and what procedures they must follow in order to comply with the law.

Its other provisions also provide important protections and services for people with disabilities. It gives financial and legal support to Centers for Independent Living. Every state has these nonprofit, nonresidential centers that provide information and training on independent living skills, peer counseling, personal and systems advocacy, and other referral services. They help people with disabilities live as independently as possible.

Section 503 of the Rehabilitation Act says that agencies and organizations that receive federal funds must develop affirmative action programs for people with disabilities. Section 504 prohibits organizations that receive federal funds from discriminating against people solely on the basis of a disability.

All of these provisions may affect your life as you travel on the road to work. This book will focus on explaining how you can work with agency programs that provide rehabilitation, training, and job placement. We start off on the journey by discussing the transition from high school programs to adult services. The ideas on self-advocacy, family involvement, and problem-solving form the basis of the skills you'll need to work with adult service providers.

Transition for Ages 14 to 21

In many ways, making the transition from high school to the adult world is like taking a road trip. Knowing your destination and having a good map can help you arrive where you want to go.

Transition planning is the process of defining where you want to go and identifying the best roads to take you there. It is an effort to help you reach the best possible outcomes, encourage your dreams, and find answers to life questions. You can use this time to try things out, make mistakes, and succeed by your own efforts.

Understanding your rights in transition planning will help you and your family use services effectively and make informed decisions about your future.

What are transition services?

Transition is the planned movement from school to adult life. Under the Individuals with Disabilities Education Act (IDEA), your local school must help you and your family make plans for your transition from school-based services to adult services. IDEA is the main source of federal aid to

state and local school systems for special education and related services for children with disabilities. IDEA requires states to give all children with disabilities a free, appropriate public education in the least restrictive setting. It also outlines the regulations schools must follow in providing you with transition services.

Both IDEA (Section 300.29) and the Rehabilitation Act (Section 2(37)) define transition in the same way. *Transition services* are coordinated activities for a student with a disability. The services are (1) designed with a goal in mind, and (2) help the student move from school to adult activities such as:

- ☐ post-secondary education
- ☐ vocational training
- ☐ employment
- ☐ continuing and adult education
- ☐ adult services
- ☐ independent living
- ☐ community participation



Your transition activities must be based upon your preferences and interests as well as your needs, including:

- ☐ the instruction you need
- ☐ your community experiences
- ☐ your goals for employment and other adult goals
- ☐ daily living skills, if appropriate
- ☐ your Rehabilitation Technology Assessment
- ☐ functional evaluation results

Federal law requires schools to help young people with disabilities develop job goals and independent living plans before they leave high school. (For an excerpt from the Rehabilitation Act, see the appendix pages 32–35.)

When does transition begin? How long does it last?

According to IDEA, *planning* for the transition to adulthood must begin by age 14 or grade 9. It can begin sooner if appropriate. Parents and family members can start this process as early as their child needs. Under IDEA, transition *services* must begin by age 16. Under Minnesota law, both planning and implementation of services must begin by age 14.

Your personal participation in this process is critical. Your involvement—and your family's—helps ensure that your transition plan reflects your needs, interests, strengths, capabilities, and preferences. It also helps make sure that your activities and training focus on achieving your goals.

Transition continues until you receive your high school diploma, or until you turn 21. In Minnesota, transition currently can last until September 1 after you turn 22. Other states likely have different age guidelines. (Note: Minnesota law changes on July 1, 2002. Then you will be eligible for transition services only until the July following your 21st birthday.)

Transition and Individualized Education Programs

As a student with a disability, you probably have a written Individualized Education Program (IEP) that focuses on your education goals. By the time you turn 14, your IEP must start to include your plans for after high school, too. It must focus on your goals and the services that will help you gain the skills you'll need as an adult.

During the last year of school, the plan must include, *in writing*, your goals for adult life. After you graduate, you will become responsible for working toward these goals, although you may have help from a vocational rehabilitation counselor.

A key part of transition planning is to identify the public agencies that can help you after high school. Vocational rehabilitation agencies, county services, and post-secondary programs all offer services.

Adult services may be very different from those you are used to receiving at school. Many agencies have specific eligibility guidelines. Some have waiting lists for services. It is very important to have providers of adult services attend your IEP meetings early in the transition process so you can begin to learn about these systems and how they will affect your life after you graduate. It also gives adult service providers an opportunity to know you and your needs. This helps your service provider offer you guidance on how you can solve the challenges of adult life. Your transition IEP should define the responsibilities of each public agency involved.

The transition IEP meeting

The transition IEP meeting is the time to discuss your plans for adulthood with everyone who has a stake in your transition plan. The people at this meeting are called the *transition team*.

The school district must let you and your parents know about the meeting early enough so you can attend. It must tell you the purpose of the meeting and the time, date, and location. Your parents must be informed that you have been invited to attend.

Most states transfer parental rights to the student when he or she reaches the age of majority. If this is true in your state, one year before you reach the age of majority (18 in Minnesota), the school must inform you and your parents about this transfer of rights. If a student is declared incompetent or is unable to make educational decisions, however, these rights are not transferred.

Vocational rehabilitation and transition

If you think your plans might include vocational rehabilitation services during or

Who must be present at the transition IEP meeting?

- ☐ a special education teacher
- ☐ a regular education teacher
- ☐ school district staff qualified to provide or supervise special education and knowledgeable about the general curriculum and the availability of district resources

Who else must be invited to the transition IEP meeting?

- ☐ you
- ☐ one or both of your parents
- ☐ other teachers
- ☐ someone who can explain the results of any assessments that have been done

Who else can be invited by you, your parents, or the school district?

- ☐ another service provider (occupational therapist, physical therapist, speech therapist, social worker, school nurse, and others)
- ☐ people who represent other agencies (rehabilitation services, public health agencies, county social workers or service providers, and others)
- ☐ people who know you well (friends, other family members, neighbors, clergy, employers)
- ☐ someone from an outside school district
- ☐ someone who understands your racial, cultural, or disabling differences

after high school, it is a good idea to invite a vocational rehabilitation counselor to your transition IEP meetings as soon as possible. Every public school in Minnesota is assigned a vocational rehabilitation counselor. The counselor might not provide services while you are still in school, but you can begin to know each other. That can make the transition to vocational rehabilitation smoother. Rehabilitation counselors also know about current and future job trends, keep updated on technology, and can be excellent advisors.

Your transition priorities

When you write your transition plan, you can set priorities and focus on what is most important to you. Your transition IEP should build on skills you developed through your previous IEPs. Transition services and activities should take place in the community where you are, or can be, active. You may need many real-life opportunities to practice your skills.

Remember that transition services should provide you with the experiences and resources to develop the skills you'll need for the future.

Planning for graduation

It is important to plan for your graduation from high school. If you have continuing needs, such as building skills for independent living or work, you may want to stay in school up to age 21. These needs must be stated in your IEP and must include community-based instruction, learning experiences, and other adult objectives.

If you stay in high school past the typical graduation date, you may be able to participate in the graduation ceremony and activities with your

class without receiving your official diploma. You would then receive your diploma when you completed your transition objectives.

Self-advocacy

If you are still in school, have you thought about playing a more active role in your transition plans? Have you considered leading all or part of your IEP meeting? Can you explain your disability to others? Do you know what types of accommodations you need to find a job or seek post-secondary education?

Once out of high school you will have to be your own advocate. Why not start now? Begin learning how to advocate for yourself. Take charge of your future, and gain experience and confidence.

Advocating for yourself and using services such as vocational rehabilitation can be challenging—and sometimes intimidating. Remember, you are your own best advocate. You know better than anyone else does what you want.

Always remember, you know yourself better than anyone else does.

The following suggestions may help you use vocational rehabilitation services, or advocate for yourself in other situations:

- ☐ Write down ideas and questions before you see your counselor. You can bring enough copies of your questions or ideas for everyone at the meeting.
- ☐ Rehearse what you want to say before you make a phone call or visit. You can practice with a friend or use a tape recorder. This can reduce stress and help you remember the words you want to say.
- ☐ Bring a friend or family member to the meeting to give you support.
- ☐ Right after each meeting or phone call, write down what was said, what was decided, and who is responsible for each action. This way, you have notes to review and a record if things aren't done the way you thought they would be.
- ☐ It is a good idea to write a note to your counselor or teacher summarizing the meeting and your understanding of what was decided and what actions will be taken.
- ☐ Be honest about your likes and dislikes.
- ☐ Ask others to explain or help when you need it.
- ☐ If you change your mind about something you agreed to, talk to your counselor or teacher right away so new plans can be started.

Vocational Rehabilitation

Your transition planning will help you find the services you need after you graduate from high school. Many students with disabilities rely on vocational rehabilitation services after they graduate. Other people enter the system in different ways.

Vocational rehabilitation refers to employment-related services that are usually provided by agencies operating under the Rehabilitation Act. Vocational rehabilitation services usually start after high school, but sometimes students begin services during high school. It all depends on your individual needs.

In Minnesota, vocational rehabilitation is provided by two service agencies. *Minnesota State Services for the Blind (SSB)* serves people who are blind or visually impaired regardless of any additional disability they may have. SSB also helps with books, magazines, and other printed material for people who are unable to read print for reasons not related to blindness (learning disabilities, inability to hold a book, etc.). *Rehabilitation Services (RS)* provides services for all other people who have disabilities. In some states, these two services are combined into one agency.

Counselors from both of these agencies are located in Workforce Centers throughout Minnesota. Workforce Centers are one-stop service centers for all job-seekers. They combine many public and private programs and agencies at one location so people applying for multiple services don't have to travel from one agency to another. At Workforce Centers, people with and without disabilities can receive skills assessment services, information on employment and training opportunities, unemployment/reemployment services, job search and placement assistance, and up-to-date information on job vacancies. People with disabilities are eligible for all programs provided at the Workforce Center, not only vocational rehabilitation. All states have or are developing such centers. The law that covers these centers is called the Workforce Investment Act of 1998. (See appendix, page 37.)

Applying for services

To apply for vocational rehabilitation you must fill out an application at State Services for the Blind (SSB) or the Rehabilitation Services (RS). There are offices throughout the state.

In Minnesota, to find the office that is closest to you, call or write to the main offices:

Rehabilitation Services

Administrative Office
390 N. Robert St.
St. Paul, MN 55101
651-296-5616 (voice); 651-296-3900 (TTY);
1-800-328-9095 (toll-free in Greater Minnesota)

Minnesota State Services for the Blind

2200 University Ave. W., Suite 240
St. Paul, MN 55114
651-642-0500 (voice); 651-642-0506 (TTY);
1-800-652-9000 (toll-free in Greater Minnesota)

WorkForce Center information line

1-888-438-5627 (toll-free)
<http://www.des.state.mn.us/wfc/>

In other states, the easiest way to find the Vocational Rehabilitation office nearest you may be to call Directory Assistance and ask for the state vocational rehabilitation agency or Workforce Center.

The National Rehabilitation Information Center can also refer callers to their state vocational rehabilitation office. Call 1-800-346-2742 or 301-495-5626 TTY. You can also reach the office by email at naricinfo@kra.com or visit the Web site: www.naric.com/.

Disability advocacy organizations should also be able to refer you to the appropriate agency or office. Call PACER Center to obtain information about your local Parent Training and Information Center or Community Parent Resource Center. 1-800-53-PACER (in Greater Minnesota) or 1-888-248-0822 (nationwide).

Eligibility

When you apply for services, you are assigned a counselor. The counselor first helps determine whether you are eligible for service. To be eligible:

1. You must have a disability that causes problems for you in finding or keeping a job.

-
2. You must need help from vocational rehabilitation agencies to prepare for a job or to enter or keep a job that fits your abilities and capabilities.

In some states, you will also be evaluated to determine the severity of your disability. This information is used in a process called *order of selection*. Because of limited funding, some states serve people with the most significant disabilities first. Minnesota and some other states look at the extent of your disability before offering services.

Order of selection is usually determined by assessing seven areas of functioning:

- ☐ mobility
- ☐ self-direction
- ☐ self-care
- ☐ interpersonal skills
- ☐ communication
- ☐ work tolerance
- ☐ work skills



In 1999, having limits in one of these seven areas was enough to qualify for services in Minnesota. This selection process could change if RS or SSB cannot serve everyone who qualifies under the current system. No state would change its order of selection rules, however, without notice and hearings. Each state has different plans to meet the order of selection requirements.

Once you apply for vocational rehabilitation services, the agency must let you know within sixty days if you are eligible. If the agency requests more time to determine your eligibility, you can agree to an extension. Rehabilitation Services must have clearly documented evidence to find

you ineligible for services. Later we will discuss what you can do if you are found ineligible. (See page 38.)

Ann, Jim, and Connie in the examples at right would probably be eligible to receive services. Remember, though, that each person is unique and many different situations and circumstances can affect eligibility.

Ann has a disability and works at a store as a cashier. Her disability is becoming worse, and she is in danger of losing her job because her disability is affecting her performance.

Jim has a disability that affects his ability to work well with others. He has just graduated from high school and is having a hard time keeping a job. He was just fired from the pizza restaurant where he was working.

Connie has been a truck driver for many years and recently became disabled. She can no longer drive a truck but would like to take training to become a dispatcher.

Assessment

Once you have been determined eligible for services, your counselor assesses your needs. You and your counselor work together to decide what help you need. Your assessment must focus on your strengths, your likes and dislikes, and what you need in order to work in a job that fits your abilities and capabilities.

Your counselor will look at information about you and your disability from many sources. Counselors may look at your records from school and community agencies, your medical history, social security records, and other documentation. They also consider statements from you, your family, and your friends about your disability and how it affects your employment outlook.

The assessment will also look at whether you need multiple vocational rehabilitation services over a long period.

The Rehabilitation Act assumes that people can work, no matter how significant their disability might be. If the agency does not believe you can work, it must prove its case with "clear and convincing" evidence.

Planning

As you talk with your counselor about your needs and goals, you'll complete a form the Rehabilitation Act calls the *Individualized Plan for Employment* (IPE). In Minnesota, this form is called the *Employment Plan*. Your state may also have a different name.

The Rehabilitation Act states that your service agency must help you find a job "commensurate with your abilities and capabilities." This means that you should have a job that uses your skills and potential.

Vocational rehabilitation agencies can help you make plans. They may also be able to help with some or all of the costs of reaching your job goals. If you're not sure what you want to do, your counselor can help you identify your skills and interests. He or she can also help you learn about the job market and the kinds of jobs you might want to explore. Together, you'll develop a plan to reach your employment goals.

Vocational rehabilitation services usually end once you have successfully worked for at least 90 days. Your case file can be re-opened if additional services are needed for you to keep, regain, or advance in employment. Services can also end if you no longer want to participate, or if it becomes clear that the services cannot help you with your employment goals.

John has cerebral palsy. He doesn't use a communication device, and people who first meet him sometimes have difficulty understanding his speech. John spent his school years mostly in general education classes. He has excellent grades and strong academic skills, especially in math and physics. After leaving school, John went to work in a sheltered workshop stamping the date on packages for shipping.

Do you think this job fits John's abilities, interests, and potential?

John doesn't. He'd like to go to college to study engineering. He has contacted his state vocational rehabilitation agency to find out what kind of services it provides.

His counselor finds John eligible for services. Together they create an Individualized Plan for Employment (IPE) that includes college coursework, assessment of John's potential for using computers or other rehabilitation technology devices, and, eventually, job placement.

The Individualized Plan for Employment (IPE)

The Individualized Plan for Employment (IPE) is a plan designed to help you reach your employment goals. You and your counselor work together to write an IPE. You identify your job goals, the services you need, how long the services will last, and who will provide them.

This plan is for your future. You need to make sure that your goals and the help you need are written into your plan. Think about involving your parents, friends, and other people who have a good understanding of who you are and what you need. The more views you have on your strengths, abilities, and capabilities, the better your plan will be.

Counselors follow strict data privacy laws that protect your right to confidentiality. If you are an adult and do not have a guardian or conservator, then you need to sign a release form so the agency can talk to your parents or other people you want involved in your plan.

Your IPE must include a statement, in your own words, describing:

- how you were involved in choosing your goals and objectives, and
- how you helped decide on the services and the methods of providing services.

Also, you and your counselor must agree on your responsibilities for carrying out your plan for employment and list them on your IPE. Both you and the counselor must sign the plan to show you agree to it.

You will receive a copy of the IPE. Your family member or advocate may also receive a copy, if appropriate. The IPE must be written in the language or mode of communication you use. (For example, in translation, Braille, or American Sign Language). Family members or advocates who help you will receive copies in the language or mode of communication they use.

The IPE must be reviewed at least once a year by you and your counselor, but together you can make changes whenever they are needed.

Some examples of services that could be included on an IPE:

- ☐ rehabilitation technology
- ☐ supported employment
- ☐ vocational training
- ☐ job placement

Rehabilitation technology

Rehabilitation technology includes any equipment or methods that allow someone with disabilities to do a job. Examples of rehabilitation technology include:

- ☐ TTYs and telephone relay services
- ☐ special software
- ☐ alternative keyboards, screen readers, touch windows, or switches to make computers accessible
- ☐ adapted equipment such as special pencil holders, magnifiers, chairs, and desks

-
- ☐ training to use technology
 - ☐ new methods of completing a task

The goal is to allow people with disabilities to reach their potential in any setting.

If rehabilitation technology addresses your needs and the challenges you face in trying to reach your employment goal, your IPE must list the specific rehabilitation technology services to be provided.

Supported employment

Supported employment gives people with the most significant disabilities an opportunity to work. In supported employment, you can receive ongoing help in learning or doing a job. Supported employment can also mean helping someone with mental illness through several temporary jobs that lead toward permanent employment.

Supported employment works well for people who haven't had much work experience or who have only worked off and on because of their disability. The Rehabilitation Act describes supported employment as an acceptable outcome for vocational rehabilitation services. Counselors must consider this option when determining someone's eligibility for services.

A key part of supported employment involves *ongoing supports*. For funding purposes, ongoing supports are broken into two types: time-limited and extended services.

Joe uses an electronic device to communicate through a computerized voice. He has been working with a counselor to reach his job goal of becoming a receptionist. Joe and the counselor thought that Joe would be able to work as a receptionist if he could use rehabilitation technology. RS paid for a rehabilitation technology assessment, which focused on how Joe's communication device could be used in an office.

Joe found a job at a hospital. He retrieves patients' names from the computer and directs visitors to rooms. Joe can do this job by connecting his communication device to the computer. He can then use his communication device as a keyboard to retrieve and enter information. The computer voice also enables him to give this information to visitors.

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- *Time-limited services* are offered for a period set by the individual and counselor. Funding can begin at assessment for services and usually continues for no more than 18 months.

- *Extended services* last more than 18 months. For these services, the counselor must find a source of funding for service past the initial term. This source is usually the county, but funding can also come from other government programs, employers, or other sources.

Ken has a developmental disability. He earns minimum wage working part time at a restaurant doing food preparation through a supported employment program.

Ken's program includes a job coach, who helps him understand how to do his job and offers on-the-job support. Because Ken wants to do this job by himself eventually, his manager and coworkers are learning how to provide ongoing supports for Ken.

If resources for time-limited or extended services aren't available when you apply, you should still be found eligible for vocational rehabilitation services and work with a counselor to develop an IPE for other services.

The type of assistance you receive depends on your needs. Help in finding and maintaining a supported employment position can occur on the job site, off the job site, or both. Your IPE must describe where the services will be provided and how many hours a week you want to work.

You also need to consider the wages you want to earn now and in the future. If you decide you are willing to work for less than minimum wage, set a goal to identify when you want to receive at least minimum wage. As your productivity increases or you find a job that better matches your skills or support needs, you can expect to earn more. Even with low productivity you may be able to start at minimum wage or above, depending on the employer and on what the job coaching agency requests.

Sometimes job coaches are hired to help and supervise supported employees. The employer usually pays a job-coaching agency to hire and pay the workers. Jobs can be set up for one person or for a group of people with disabilities. This method is called *traditional supported employment*.

Another method called *natural supported employment* focuses on teaching coworkers and supervisors to provide on-the-job training and ongoing supports for the worker. The person with a disability is hired by an employer, not a job-coaching agency. The job is set up for one person, not a group of employees with disabilities.

Your IPE should identify what kind of support you or your guardian wants. The approach you want determines what the job-coaching agency looks for in a job and how it talks to an employer. If you want natural supported employment, you and your counselor need to choose a job coaching agency that knows how to use this approach and will support your other goals on the IPE.

Financial Factors

Because funding for vocational rehabilitation services is limited, agencies look at different ways of paying for what you need. When thinking about financial factors, you need to understand two terms: *comparable benefits* and *consumer financial participation*.

Comparable Benefits

Before RS or SSB will provide or pay for some services, it may ask you to look for *comparable benefits*. This means you must search for a way to pay all or part of the cost of your services. RS and SSB can ask you to look for other sources to help pay for your services, but they cannot ask you to take out a loan to pay for them.

Examples of comparable benefits are:

- ☐ Medicare or Medicaid
- ☐ private insurance
- ☐ worker's compensation benefits
- ☐ community social service agencies



-
- ☐ other state agencies
 - ☐ educational training grants and scholarships

You can apply for a waiver from this search if certain conditions apply — for example, if a delay means that you'd lose a job opportunity.

Consumer Financial Participation

You may also have to pay for some of the services and training you need to reach your job goal. How much you pay is determined by looking at your income and the official poverty line for your family size. What you pay is called *consumer financial participation*. Counselors report that most people who apply for services do not have to pay anything because their income is too low.

In Minnesota, if you qualify for Medical Assistance, the Minnesota Family Investment Program, General Assistance, or Supplemental Security Income, you will not have to pay. Most states are probably similar, but each state has slightly different rules on consumer financial participation. Check with your counselor about the exact rules that apply to you.

Some services from vocational rehabilitation agencies are free, regardless of your income and assets:

- ☐ assessment for determining eligibility and vocational rehabilitation needs
- ☐ rehabilitation counseling and guidance
- ☐ work-related placement (help in searching for a job, keeping a job, and follow-up services)
- ☐ rehabilitation technology



Rehabilitation Appeal Procedures

Sometimes people disagree with decisions made by a counselor. If that happens, they can appeal the decision. To *appeal* means to ask a higher authority to reconsider a decision. You can appeal *any* decision made by your vocational rehabilitation agencies, about any part of the process from eligibility to case closure. (See page 38 for details on how to file an appeal.)

If you are having difficulties with your rehabilitation agency, the Client Assistance Project (CAP) may be able to help. CAP provides information on available benefits and the rights of vocational rehabilitation applicants and consumers. CAP can advocate for you and assist you in an appeal. It may also help with legal and administrative services. (See page 40 for details on CAP in Minnesota and on how to contact your state's Client Assistance Project.)

Helen is eligible for vocational rehabilitation services. As part of her IPE, she wants Minnesota State Services for the Blind to provide a computer and a specific training program she believes would let her reach her employment goal.

Her counselor, however, believes there is no disability-related reason for Helen's request. The counselor and Helen are unable to agree about an independent technology assessment. Helen decides to appeal because she is not satisfied with her counselor's final decision.

Some points to remember about appeals:

1. The rehabilitation agency must give you written notice of your right to appeal, including information about the Client Assistance Project. The notice must be written in a language or form of communication you understand.
2. You must also be given written notice of your rights
 - ☐ when you apply for services
 - ☐ if the rehabilitation agency decides you are not eligible for services
 - ☐ when you develop your IPE
 - ☐ if during your IPE, the rehabilitation agency wants to stop or reduce your services
3. If you appeal a change in your IPE, the services in question must be continued, if you wish, until a final decision is made (unless the services were obtained through misrepresentation, fraud, collusion, or criminal conduct).

Many Parent Training and Information Centers such as PACER provide training and advocacy on the Rehabilitation Act, the Americans with Disabilities Act, and other civil rights and employment issues.

In Minnesota, you can call PACER's Project PRIDE to find an advocate near you. If you live in another state, PACER's TATRA Project can help you find a nearby advocacy agency. Call 1-888-248-0822.

The Americans with Disabilities Act (ADA)

The Americans with Disabilities Act (ADA) prohibits workplace discrimination on the basis of disability. The ADA states that employers must be fair in all areas of employment, from hiring to promotion to retirement.

All employers of fifteen or more workers are covered by this law. Minnesota state laws protect employees even if an employer has just one employee. Check to see what additional human rights protections apply in your state.

Who does the ADA protect?

The ADA protects "qualified individuals" with disabilities from discrimination. A *qualified individual* is someone who has the training, experience, or skills needed to do a particular job. To be qualified, the person must be able to do the essential functions of that job. This means that you must be able to perform the tasks essential to what the job is intended to accomplish.

Vocational rehabilitation programs can help people with disabilities receive the education and training to become qualified for specific kinds of employment. When someone is qualified for a job, the ADA prevents employers from discriminating against someone who has a disability.

Reasonable accommodations

There is another important factor to know about employment: You can be qualified for a job even if you need reasonable accommodations to do the work. A *reasonable accommodation* is a change in the workplace, training methods, ways of operating, etc., that helps you do your job.

Examples:

- ☐ different ways of doing the job
- ☐ flexible schedules
- ☐ reassigning nonessential job duties
- ☐ modifications to existing equipment
- ☐ additional equipment
- ☐ rearranging furniture
- ☐ architectural changes
- ☐ interpreters and readers



Employers cannot disqualify you as a candidate for a job simply because you need accommodations for your disability. But you must be able to perform the essential functions of the job.

Both the Rehabilitation Act and the ADA require employers to provide reasonable accommodations for employees with disabilities—unless it's

an "undue hardship" for them. Although most accommodations are not costly or difficult, some employment accommodations may be very expensive. In those cases, state vocational rehabilitation programs may be able to help. Sometimes vocational rehabilitation programs can pay for the costs of accommodations written into the IPE if the employer can't afford them.

Judy is blind. She has used rehabilitation programs offered by SSB. They helped her find a job that uses her skills as a writer, but her employer can't afford to purchase the special computer equipment she needs.

So Judy's SSB counselor and her employer worked out an agreement. Judy's employer will provide her with a computer and a regular printer. SSB will purchase a Braille printer, equipment, and software that will enable the computer to read out loud what is on the screen. SSB will also pay for the training needed to operate this equipment.

Job interviews

The ADA makes it illegal for an employer to ask a potential employee about disabilities on a job application or in a job interview. Employers may not ask about past insurance claims, medical treatment, or anything else designed to find out if you have a disability.

If your disability is obvious or if you mention it, however, the employer can ask how you would do the essential functions of the job. To answer this question, tell the employer about any accommodations you have successfully used in the past and what you'd need now.

Communicating what you need is important because employers are not required to provide reasonable accommodations unless an employee asks for them. You must be the one to inform your employer of your needs. You do not have to inform the employer of a disability if you are not requesting accommodations.

The ADA does *not* require an employer to hire you just because you have a disability. It simply prohibits employers from discriminating against you because of your disability. If another applicant is more qualified than you, the employer can legally choose to hire that person.

Complaints

You can file a complaint if you think you have been discriminated against because an employer

- ☐ refuses to provide reasonable accommodations
- ☐ refuses to hire you just because of your disability
- ☐ refuses to promote you because of your disability
- ☐ engages in other discrimination based on your disability



If you want help deciding if you have a legitimate complaint, advocacy agencies and written materials can help you. You can learn more about your rights and responsibilities under the ADA. You can start with your regional ADA Disability and Business Technical Assistance Center (DBTAC), which can be reached anywhere in the United States by calling 1-800-949-4232.

You can pursue an ADA complaint informally or formally. Informally, you could contact the union or human resources office of the employer to see if they can help you solve the problem without going outside the company.

If that is not successful, you may want to pursue a formal complaint. You can then contact the Equal Employment Opportunity Commission (EEOC) at 1-800-669-4000. In Minnesota, you can contact the Minnesota Department of Human Rights at 612-296-5665 to file a formal complaint.

You can also file a private lawsuit, but you must first file a formal complaint with the EEOC.

Vocational Rehabilitation Can Work for You!

Achieving your employment goal can be a challenge. You must understand and exercise your rights. If you need help, reach out. Contact a local disability organization or the Client Assistance Project (CAP). Remember, you can always contact the Parent Training and Information Center in your state.

New laws affecting people with disabilities have been passed because of the persistence and hard work of many people over the years. People with disabilities, their family members, advocates, and professionals continue to inform Congress about the needs and capabilities of people with disabilities, civil rights issues, and discrimination. Great changes in society's attitudes can occur when people promote the inclusion and meaningful participation of individuals with disabilities in their communities.

A Short History of Legislation Affecting People with Disabilities

Civil Rights Act — 1964

In 1964, Hubert Humphrey proposed that people with disabilities should be a protected class along with racial and ethnic minorities under the Civil Rights Act. In order to receive the votes needed for the act to pass, however, people with disabilities were excluded. Even though the final law did not include people with disabilities, disability rights became a national issue for the first time.

The Civil Rights Act was amended in 1991 and now allows victims of harassment and other intentional discriminatory acts based on sex, religion, or disability to receive limited monetary damages.

Rehabilitation Act — 1973

The Rehabilitation Act of 1973 has been amended several times to reflect changing attitudes and service needs. Part of the 1973 Act, Section 504, prohibits agencies or organizations that receive federal funds from discriminating against qualified individuals solely on the basis of disability.

Section 503 of Title V provides for affirmative action programs to ensure the hiring, promotion, and fair treatment of people with disabilities at federally funded agencies.

In 1992, the Rehabilitation Act was amended to reflect a significant shift in society's attitudes toward people with disabilities. The Act acknowledges that society is beginning to understand that disability is a natural part of human experience. Under this legislation, people with disabilities are presumed to be able to work no matter how significant their disability may be. People with disabilities no longer have to prove that they have the potential to work or can benefit from services. If someone has a disability that causes a significant barrier to employment and needs vocational rehabilitation services for employment, he or she is eligible.

In 1998, the Rehabilitation Act was amended to become an integral part of the Workforce Investment Act. (See below.)

The titles of the Rehabilitation Act include:

- Title I. Vocational Rehabilitation Services
- Title II. Research and Training for the National Institute on Disabilities
- Title III. Training and Demonstration Projects
- Title IV. National Council on Disability Funding and Regulations
- Title V. Rights and Advocacy

Title VI. Other Employment Opportunities

Title VII. Independent Living Services and Centers for
Independent Living

Below is an excerpt from the Rehabilitation Act as amended in 1998:

Sec. 2. (a) Findings

Congress finds that—

- (1) millions of Americans have one or more physical or mental disabilities and the number of Americans with such disabilities is increasing;
- (2) individuals with disabilities constitute one of the most disadvantaged groups in society;
- (3) disability is a natural part of the human experience and in no way diminishes the right of individuals to—
 - (A) live independently;
 - (B) enjoy self-determination;
 - (C) make choices;
 - (D) contribute to society;
 - (E) pursue meaningful careers; and
 - (F) enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society;
- (4) increased employment of individuals with disabilities can be achieved through implementation of statewide workforce investment systems under title I of the Workforce Investment Act of 1998 that provide meaningful and effective participation for individuals with disabilities in workforce investment activities and activities carried out under the vocational rehabilitation program established under title I, and through the provision of independent living services, support services, and meaningful opportunities for employment in integrated work settings through the provision of reasonable accommodations;
- (5) individuals with disabilities continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and public services; and

-
- (6) the goals of the Nation properly include the goal of providing individuals with disabilities with the tools necessary to--
- (A) make informed choices and decisions; and
 - (B) achieve equality of opportunity, full inclusion and integration in society, employment, independent living, and economic and social self-sufficiency, for such individuals.

(b) Purpose

The purposes of this Act are—

- (1) to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society, through—
 - (A) statewide workforce investment systems implemented in accordance with title I of the Workforce Investment Act of 1998 that include, as integral components, comprehensive and coordinated state-of-the-art programs of vocational rehabilitation;
 - (B) independent living centers and services;
 - (C) research;
 - (D) training;
 - (E) demonstration projects; and
 - (F) the guarantee of equal opportunity; and
- (2) to ensure that the Federal Government plays a leadership role in promoting the employment of individuals with disabilities, especially individuals with significant disabilities, and in assisting States and providers of services in fulfilling the aspirations of such individuals with disabilities for meaningful and gainful employment and independent living.

(c) Policy

It is the policy of the United States that all programs, projects, and activities receiving assistance under this Act shall be carried out in a manner consistent with the principles of—

- (1) respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities;

-
- (2) respect for the privacy, rights, and equal access (including the use of accessible formats), of the individuals;
 - (3) inclusion, integration, and full participation of the individuals;
 - (4) support for the involvement of an individual's representative if an individual with a disability requests, desires, or needs such support; and
 - (5) support for individual and systemic advocacy and community involvement.

The Rehabilitation Act defines *transition services* as follows:

The term "transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. [Section 2(37)]

Education for All Handicapped Children Act — 1975 (now known as IDEA 1990, IDEA 1997)

Until the Education for All Handicapped Children Act passed in 1975, children with disabilities had no specific legal rights to an education. Although some states required services for some students with disabilities, many students were not permitted to attend school at all.

The idea that all children have a right to education has its roots in a landmark segregation case from 1954, *Brown vs. Board of Education*. The

Chief Justice of the U.S. Supreme Court ruled that segregating students based on race "created damage to the hearts and minds of children that was likely never to be undone." The ideas established in *Brown vs. Board* were used by parents, professionals, and disability advocates to argue that discrimination based on disability was similarly illegal.

Several cases in the 1970s expanded rights to some groups of children with disabilities. Finally, on November 19, 1975, President Gerald Ford signed the first compulsory special education law—the Education for All Handicapped Children Act. The law guaranteed students with disabilities the right to an appropriate education, and provided their parents with certain rights to participate in developing their child's educational program.

The law has been amended several times. For example, Congress encouraged states to begin providing services to infants and toddlers with disabilities by providing funding to states that chose to serve young children. The law also was renamed the Individuals with Disabilities Education Act, or IDEA.

The Carl Perkins Act — 1984

The Carl Perkins Act of 1984 states that schools must inform parents of vocational education opportunities by the time their child is in ninth grade and that students with disabilities shall receive:

- vocational assessments
- special services
- career and transition counseling

Americans with Disabilities Act (ADA) — 1990

The Americans with Disabilities Act of 1990 gives civil rights protection to people with disabilities. It guarantees equal opportunity in:

- employment
- private businesses and nonprofit agencies that serve the public
- transportation
- state and local government operations
- telecommunications, including relay services so that people who are deaf or hard of hearing can communicate with others who do not have these disabilities

The Workforce Investment Act — 1998

Workforce Investment Act focuses on meeting the training, education, and employment needs of individuals and the needs of businesses for skilled workers. It incorporates all work-related programs for all job-seekers (with or without disabilities) at one-stop career centers. These are called Workforce Centers and can meet many job-training needs in an integrated setting.

Title IV of the Workforce Investment Act reauthorizes Rehabilitation Act programs through Fiscal Year 2003 and links these programs to state and local workforce development systems.

Vocational Rehabilitation Appeals Procedures

The following procedure can vary somewhat in each state agency. Your state agency will have its procedure in writing.

There are two ways to appeal a decision made by a vocational rehabilitation agency: informal resolution and formal hearing. You have the right to choose either or both of these procedures. The time lines in the following procedures must be met unless you agree to an extension.

Informal Resolution

There are two levels within the Informal Resolution: the Supervisory Review and the Administrative Review. You need to decide which will work best for you.

Supervisory Review

This review is run by your counselor's supervisor. You can make a request for a Supervisory Review in person, in writing, or over the phone.

The counseling supervisor must make a decision within 15 working days of your request. The decision must be in writing and must include the reasons for the decision and information regarding your rights to an Administrative Review.

Administrative Review

If you are not satisfied with the results of the supervisory review, or would prefer not to interact with your counselor or the supervisor, you can request an Administrative Review by the Director of Rehabilitation Services. An Administrative Review will be held within 30 calendar days from the date of your request. The Director has 20 working days from the mutually agreed upon meeting date to make a decision in writing. It must include the reasons for the decision, as well as information on your right to a formal hearing and the steps for requesting one.

Formal Hearing

A formal hearing (also called a *fair hearing*) is held before an independent hearing officer who does not work for Vocational Rehabilitation. A Formal Hearing can be requested in writing from the Assistant Commissioner of Rehabilitation Services. Your case must be heard no later than 45 calendar days from the date Vocational Rehabilitation received the request for a formal hearing. A decision must be made within 30 days of the completion of the hearing.

It is important to remember that each appeal is different. You need to assess your individual needs and then follow the appeal procedure that best suits those needs.

The Client Assistance Project

If you plan to appeal any decision at any level, you should contact the Client Assistance Project (CAP), which provides statewide advocacy to help people with disabilities access the vocational rehabilitation services they are entitled to by law.

CAP is a federally funded, free advocacy program that is required by federal law to make sure people with disabilities have the services they need. CAP can help you work to receive the best help from Rehabilitation Services (RS) or State Services for the Blind (SSB). Anyone who has applied for or is a vocational rehabilitation services can apply. CAP can help:

- answer your questions about RS or SSB
- make sure you have the right services from RS or SSB
- review your RS or SSB action
- tell you your legal rights under the Rehabilitation Act
- help develop or change your individualized plan for employment

-
- advise and help you if you disagree with decisions made by DRS or SSB

In Minnesota, CAP is a statewide project of the Legal Aid Society of Minnesota. Call 612-332-1441 (voice); 612-332-4668 (TTY); 1-800-292-4150 (toll-free in Minnesota).

You can call PACER Center for additional information and assistance; ask for Project PRIDE. The phone numbers are 612-827-2966 (voice), 612-827-7770 (TTY), 1-800-537-2237 (toll-free in Minnesota), and 1-888-248-0822 (toll-free nationwide).

Vocational rehabilitation services are available to assist you in obtaining a job. It is important to know your rights within this process to insure that you will receive the services you need to obtain and keep employment.

About PACER Center

PACER Center is a nonprofit, tax exempt Minnesota statewide organization begun in 1977. PACER's mission is to improve and expand opportunities that enhance the quality of life for children and young adults with all disabilities—physical, mental, emotional, learning—and their families. PACER now offers 20 major programs, including Parent Training programs, programs for students and schools, and technical assistance to parent centers both regionally and nationally.

PACER's programs help parents become informed and effective representatives for their children in early childhood, school-age and vocational settings. Through knowledge about laws, resources and parents' rights and responsibilities, families are better equipped to work with agencies to obtain appropriate services for their sons and daughters.

Following are just a few of the programs PACER offers for those interested in the process of transition:

Project Youth—Planning and support services for teens making the transition from school to work and independent living.

Project PRIDE (PACER's Rehabilitation Act Information & Disability Education)—Information and training for people with disabilities, their families and social service professionals about the Rehabilitation Act and similar legislation.

Workplace Transition—Information and training for supervisors and co-workers to provide on-the-job support to people with disabilities.

Minnesota Parent Center—Individual assistance, workshops and information for families and professionals encouraging involvement in the education of all children.

The Families and Advocates Partnership for Education (FAPE)—PACER serves as the coordinating office for a national, federally funded partnership linking families and advocates with researchers and policymakers. Its focus is the implementation of the IDEA Amendments of 1997. This partnership will work with those who formulate and implement policy to ensure improvement of results for children receiving special education.

For more information about transition, please visit our Web site at www.pacer.org and go to "Employment Strategies for Youth and Adults with Disabilities."

